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December 8, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 28, 2009

Case Number: TSO-0795

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on her behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information about the individual that raised security concerns, and summoned her for interviews with a personnel security specialist in July and November 2008. After these Personnel Security Interviews (PSIs), the LSO referred the individual to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist”) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. After reviewing this report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 15 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced two exhibits and presented the testimony of three witnesses, in addition to testifying herself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Alcohol Usage and Related Incidents

The following facts are generally undisputed and were obtained from the DOE psychiatrist's report. DOE Exhibit (DOE Ex.) 7. The individual began drinking in 1977, during her junior year in high school. At that time, consuming one six-pack of beer over the course of an evening would cause her to become drunk to the point of being sick. She would experience hangovers weekly including headaches, upset stomach, nausea and vomiting "probably every time [she] drank." DOE Ex. 7 at 5.

In 1978, the individual enrolled in college and began drinking approximately two to three beers per hour from 7 p.m. to 12 midnight on weekends. In 1997, the individual's mother was diagnosed with cancer, and the individual's alcohol intake increased significantly to four-to-five beers or glasses of wine daily, drinking to intoxication. After her mother's death in 1999, the individual became clinically depressed and was admitted to a local psychiatric hospital, where she was diagnosed with Major Depression, Recurrent, Bipolar Disorder, Depressed, with Suicidal Ideations and Plan, and "Alcohol Abuse and Dependency." Her liver enzymes were tested and shown to be elevated, indicating liver damage due to excessive alcohol consumption.

After her release, the individual's alcohol use slowly increased until September 2005, when she was consuming an average of a bottle of wine or two six-packs of beer every night during the week and as much as a case of beer on Saturday and Sunday. The individual indicated to the DOE psychiatrist that she may have suffered alcohol blackouts three times per week during this period. She further stated that she did not feel drunk even after drinking a case of beer, indicating a marked increase in tolerance from her college days, when consumption of one six-pack was enough to become drunk.

In September 2005, the individual readmitted herself into the local psychiatric hospital, where she was withdrawn from alcohol and treated with antidepressant medications. After being discharged, she was instructed to attend Alcoholics Anonymous (AA), stop drinking alcohol, and continue seeing a psychiatrist on an outpatient basis. She attended only "one or two" AA meetings, allegedly could not recall if she followed up with a psychiatrist, and only refrained from drinking for approximately 19 days. She last reported drinking to intoxication on New Year's Eve 2008, when she "may have" consumed as much as two six-packs of beer over the course of four or five hours. DOE Ex. 7 at 7. As of the date of the DOE psychiatrist's evaluation, she reported her current consumption of alcohol to be an average of one-to-three beers per hour from 4 p.m., the time that she gets home from work, until "9 or 10 p.m.," when she goes to bed. During this time, she said, "I always have a drink in my hand." *Id.*

Over the years, the individual has had three alcohol-related arrests. In February 1982, she was arrested for Driving Under the Influence of Alcohol (DUI). In 1994, the individual was again arrested for DUI after being stopped for speeding and having her Blood Alcohol Content (BAC) measured at .12. In August 1999, the individual was arrested for Peace Disturbance after consuming a six-pack of beer.

B. The Notification Letter and the DOE's Security Concerns

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for this criterion, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, with inadequate evidence of reformation or rehabilitation. The Letter also relies on the DOE psychiatrist's finding that the individual is in denial about her alcohol use disorder, and the individual's admissions that (i) she had at least a half-bottle of wine with dinner the evening before her evaluation by the DOE psychiatrist, (ii) over the past year, she would not drive five or six days out of every week for fear that her BAC was in excess of .08, and (iii) alcohol has affected her relationship with her co-habitant.

Under criterion (l), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation or duress which may cause [her] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). As support for this criterion, the Letter cites the DOE psychiatrist's observations that the individual was not fully cooperative during her evaluation and is in denial about her Alcohol Abuse, an inconsistency between her November 2008 PSI and her interview with the DOE psychiatrist as to whether she had ever experienced alcoholic blackouts, and her failure to mention during her July 2008 PSI that she received treatment for her alcohol use disorder at a local treatment facility.

The individual does not contest the DOE psychiatrist's diagnosis of Alcohol Abuse. Furthermore, she has admitted that she was in denial about her disorder, and that this denial led her to be less than totally candid with the DOE. Hearing transcript (Tr.) at 69-70. This derogatory information adequately justifies the DOE's invocation of criteria (j) and (l), and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Conduct involving lack of candor or dishonesty can also create doubt about a person's reliability, trustworthiness, and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E and G.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

As previously mentioned, the individual does not contest the DOE psychiatrist’s diagnosis of Alcohol Abuse. Consequently, the testimony at the hearing primarily concerned the question of whether the individual was demonstrating adequate evidence of reformation or rehabilitation.

The individual testified that although she decided to quit drinking and began attending AA meetings several days after meeting with the DOE psychiatrist in January 2009, she was still in denial about the severity of her alcohol use problem and relapsed into drinking on several occasions. Tr. at 30, 36, 43; Individual’s Exhibit 1. Then, in April 2009, the individual reviewed records from her earlier admissions to the local psychiatric hospital that the DOE psychiatrist had asked her to obtain and to provide to him. After reviewing the alcohol use history and the diagnoses set forth in those records, she was forced to face the magnitude of her disorder. Tr. at 36-37. She started taking her rehabilitation more seriously, obtained a sponsor in June 2009, and began working through AA’s 12 steps. Tr. at 38, 133. At the suggestion of the DOE psychiatrist, in July 2009 she enrolled in an intensive, five-week outpatient alcohol treatment program at a local hospital. Tr. at 41. The individual further testified that it is her intention to permanently refrain from alcohol use, Tr. at 64, and that the date of her last drink was April 15, 2009. Tr. at 50.

The individual's Exhibit 1 is a calendar documenting her AA attendance, her relapses, and other pertinent events. According to this Exhibit, the individual has attended AA meetings or follow-up therapy sessions associated with her intensive outpatient program on approximately a weekly basis since January 16, 2009, with two such meetings or sessions attended during many weeks.

The individual's claimed sobriety date of April 15, 2009, is supported by the testimony of her AA sponsor, her sister and her co-habitant. Tr. at 134, 102, 122. The individual's co-habitant, who has attended several AA meetings with the individual, testified that the individual participates in the meetings and has "really thrown herself into" her rehabilitation. Tr. at 111, 124. He added that the individual and her sponsor speak "all the time." Tr. at 115.

After reviewing this testimony and the record in this matter as a whole, I find that the individual has abstained from alcohol use since April 15, 2009, a period of approximately six months as of the date of the hearing, and has regularly attended AA or an equivalent program for approximately nine months. Furthermore, the individual's candor at the hearing convinces me that she is no longer in denial about her alcohol use disorder, and that she is committed to her recovery. I was also favorably impressed with the strength of the individual's support system. The individual's sister is herself a recovering problem drinker who often talks with the individual about issues related to maintaining sobriety. Tr. at 77, 85. As mentioned above, the individual's co-habitant has attended AA meetings with the individual, and fully supports her rehabilitative efforts.

Although these factors are significant, they do not constitute adequate evidence of rehabilitation or reformation from her alcohol use disorder. The record in this matter demonstrates a pattern of excessive alcohol use by the individual over a period of approximately 30 years. During this period, the individual has had three alcohol-related arrests, and has been hospitalized on at least two occasions for reasons relating, at least in part, to her alcohol usage. On each occasion, she returned to an abusive pattern of alcohol consumption upon her discharge. Given this history, the individual's chances of suffering a relapse after only six months of abstinence and nine months of therapy remain unacceptably high. This is especially true given the fact that the individual did not appear to take her recovery seriously until several months after she began attending AA in January 2009.

My conclusion in this regard is supported by the testimony of the DOE psychiatrist. In his report, he recommended, as adequate evidence of rehabilitation, that the individual obtain a sponsor and attend AA at least three times per week for a minimum of one year, for a total of 150 hours, and abstain from alcohol use for a minimum of two years. DOE Ex. 7 at 12. At the hearing, the DOE psychiatrist testified that the individual's six months of abstinence were insufficient to convince him that the individual's chances of relapsing are acceptably low. Tr. at 148-149. In fact, he estimated those chances as being "around 50-50." Tr. at 150. For these reasons, I conclude that the individual has not adequately addressed the DOE's security concerns under criterion (j).

I reach a similar conclusion with regard to criterion (l). Although the individual no longer appears to be in denial about her disorder, I note that all of the DOE's allegations of deceptive behavior concern attempts by the individual to hide or minimize the extent of her alcohol use. I am concerned that if she should suffer a relapse, she may again attempt to mislead the DOE in an attempt to obtain a favorable determination regarding her eligibility for access authorization.

V. CONCLUSION

The individual has failed to mitigate the DOE's security concerns under criteria (j) and (l). I therefore conclude that she has not demonstrated that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted a security clearance at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: December 8, 2009